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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1862 OF 2007

Mr.Rajesh Parwatrai Desai ... Petitioner

Versus

Deputpy Commissioner of Income Tax and Ors. ... Respondents

Mr. Arun Sathe, Sr. Counsel with Mr. Mandar Vaidya for the Petitioner.

Mr.S.M. Shah with Mr. Sandeep Wasnik for Respondent.

CORAM: F.I. REBELLO &
J.P. DEVADHAR, JJ.
DATED: OCTOBER 15, 2007

P.C.

. It is the case of the Petitioner that notice has been served upon him under section 158 BD of the Income Tax Act. It is contended that before such notice was issued, there had to be two jurisdictional facts. Firstly that the officer who had conducted raid had to record the reasons for his satisfaction and secondly he had to make available the records to the Petitioner’s Assessing Officer. It is submitted that both things have not been done. Apart from that it is contended that the Petitioner has sought information from his Assessing Officer which is not made available.

. In answer to the Petition as filed by the Petitioner, reply has been filed by Mr.Jadhav Shukracharya, Asst.Commissioner in para 5 of the said affidavit in reply which has set out as under :

> "5..... In the present case, the copy of the seized documents relevant to the Petitioner has been handed over to the Respondent No. 1. The said ACIT, Central circle - 2 Surat has clearly recorded that "it was found that Shri. Rajesh P. Desai has sold the land at Survey No. 368A and 194/P for apparent consideration of Rs.26.00 lacs while the total consideration was Rs. 1.10 Crors. Hence, an addition of Rs.84,00,101/- was made in the hands of M/s.National Builders and Developers as unaccounted investment. From the above, I am satisfied that Shri.Rajesh P. Desai has received unaccounted consideration of Rs.84,00,101/- and his name appears on the seized document at page No. 14 with reference to the said lands at Survey No. 366/A and Survey No.194/P at Chala."

. From the above it will be clear that the jurisdictional facts which according to Petitioner were absent were in fact considered before the

notice was served on the Petitioner herein. In the light of that, in our opinion, this will not be a fit case for this court to exercise its extra ordinary jurisdiction.

. As far as reasons are concerned, it is already disclosed on record. However, the respondents to make available to the Petitioner copy of the reasons recorded along with any other documents which are asked for and they are entitled to.

. With the above observations, Petition disposed of.

(J.P. DEVADHAR, J.) **(F.I.REBELLO, J.)**